

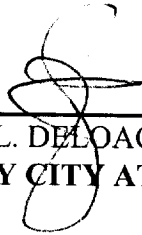
Entered - 10-22-09 sb
CL 09L0807 GWENDOLYN BURNS

10- R -0384

CLAIM OF: VICKI V. KNOX,
THROUGH HER ATTORNEY,
JAMES H. WALL, ESQ.
C. DAVID JOYNER, P.C.
1305 Mall of Georgia Boulevard
Mill Creek Forest, Suite 130
Buford, Georgia 30519

For damages alleged to have been sustained from an arrest
on August 24, 2008 at 1129 Avon Avenue, SW.

THIS ADVERSE REPORT IS APPROVED

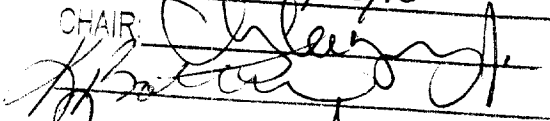
BY: 
JERRY L. DELOACH
DEPUTY CITY ATTORNEY

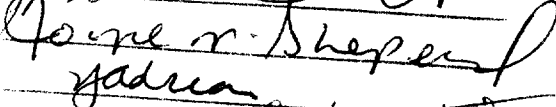
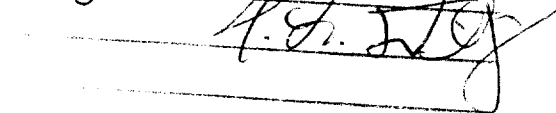
ADVERSE REPORT

PUBLIC SAFETY &

LEGAL ADMINISTRATION COMMITTEE

DATE: 2/23/10

CHAIR: 


J. H. Shepherd


MAR 01 2010

MAR 01 2010

MAR 01 2010

APPROVED BY
CITY CLERK



OFFICE OF MUNICIPAL CLERK

RHONDA DAUPHIN JOHNSON
MUNICIPAL CLERK

March 10, 2010

55 TRINITY AVENUE, S.W.
SECOND FLOOR, EAST
SUITE 2700
ATLANTA, GEORGIA 30335
(404) 330-6030
FAX (404) 658-6273

Mr. James H. Wall, Esquire
C. David Joyner P.C.
1305 Mall of Georgia Boulevard
Mill Creek Forrest, Suite 130
Buford, Georgia 30519

10-R-0384

RE: Ms. Vicki Knox

Dear Mr. Wall

I sincerely regret that your client has been adversely affected by the circumstances raised in his/her claim for damages against the City of Atlanta. Your time and patience in this matter has been greatly appreciated.

However, I must notify you that the Atlanta City Council Adopted an Adverse Report on your client's claim at its regular meeting on February 15, 2010. In consultation with the City's Law Department, who conducted an investigation of the situation, the Council has determined that the City cannot accept responsibility for this matter and therefore cannot pay this claim.

If you desire any further information, please contact the **City Attorney's Office/Claims Division at (404) 330-6400.**

Yours very truly,

Rhonda Dauphin Johnson, CMC
Municipal Clerk

cc: Claims Division/Law Department

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 09L0807

Date: January 12, 2009

Claimant /Victim VICKIE V. KNOX

BY: (Atty) (Ins. Co.) JAMES H. HALL, ESQ., C. DAVID JOYNER, P.C.

Address: 1305 Mall of Georgia Boulevard, Mill Creek Forest, Suite 130, Buford, Georgia 30519

Subrogation: Claim for Property damage \$ Bodily Injury \$ unspecified

Date of Notice: 10/20/09 Method: Written, Proper Improper X

Conforms to Notice: O.C.G.A. §36-33-5 Ante Litem (6 Mo.)

Date of Occurrence 8/24/08 Place: 1129 Avon Avenue, SW

Department POLICE Bureau: Office:

Employee(s) involved Christopher Dowd Disciplinary Action:

NATURE OF CLAIM: Claimant alleges that she was unlawfully arrested for "Interference with Custody" without due cause and with unnecessary force. However, an investigation determined that the alleged actions of the officers were justified. Secondly, the claim as presented fails to comply with the requirements of notice, pursuant to O.C.G.A. §36-33-5. Moreover, a municipal corporation shall not be liable for the torts of policemen or other officers engaged in the duties imposed on them by law, pursuant to O.C.G.A. §36-33-3.

INVESTIGATION:

Statements: City employee Claimant Others Written Oral

Pictures Diagrams Reports: Police X Dept Report X Other X

Traffic citations issued: City Driver Claimant Driver

Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial

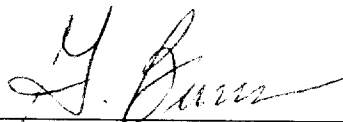
Improper Notice More than Six Months X Other X Damages reasonable

City not involved Offer rejected Compromise settlement

Repair/replacement by Ins. Co. Repair/replacement by City Forces

Claimant Negligent City Negligent Joint Claim Abandoned

Respectfully submitted,



INVESTIGATOR - GWENDOLYN BURNS

RECOMMENDATION:

Pay \$ Adverse X Account charged: General Fund Water & Sewer Aviation

Claims Manager: Concur/date 02/11/10

Committee Action: Council Action

C. DAVID JOYNER, P.C.

ATTORNEY AT LAW
1305 Mall Of Georgia Blvd.
Mill Creek Forest, Suite 130
Buford, Georgia 30519

e-mail: jwall@cdavidjoynerpc.com

ENTERED - 10-22-09 - SB
09L0807 - G. BURNS

BURNS
10/20/09
Ph: (770) 614-6415
Fax: (770) 614-7678

October 1, 2009

Officer Christopher Dowd, Badge #4857
Atlanta Police Department
Red Dog Unit
226 Peachtree Street
Atlanta, Georgia 30303

Re: Incident Report - Incident Number 08-237-1212
(Citizen Complaint 08-C-0561-MISC)

Dear Officer Dowd:

Please be advised that we have been retained to represent Ms. Vickie V. Knox, to handle all legal issues arising out of the above-referenced incident.

You arrested Ms. Knox on August 24, 2008, after being dispatched to investigate a domestic dispute. You may recall that when you arrived on the scene you met with Leashia Brightman who complained that Ms. Knox was refusing to return Ms. Brightman's child, Tyeisha Brightman, to her. You spoke with Ms. Knox, who informed you that she was in fact the legal guardian of the child and she produced documents for your review that identified her as the legal guardian for the child. These documents had been produced and signed by judges of The Probate Court of Fulton County. The Court Order was clearly identified as such and clearly designated Ms. Knox as permanent guardian for the child and as part of her duties, Ms. Knox had the obligation to feed, clothe, shelter, educate and care for the child.

In your report, you indicate that you recognized the documents, read them, but nevertheless, you concluded for reasons unknown that the documents were "*possibly* a fake or not officially filed." (Emphasis added.) Although the documents clearly indicated that they originated in the Probate Court, you nevertheless contacted the Fulton County Juvenile Court to confirm the guardianship papers. When the Juvenile Court had no change in guardianship on file, you arrested Ms. Knox for Interference with Custody, in violation of O.C.G.A 16-5-45.

You filled out a citation and made notes on the face of that citation to the effect that Ms. Knox refused to return custody of the child to Ms. Brightman. Yet, your own report indicates that this was not the case at all. In your report you record that Ms. Knox opened the door and you observed her attempt to, "block the victim [Ms. Brightman], with her arm, from leaving the

residence with the child." From this statement it is absolutely clear that Ms. Brightman had custody of her child at that time. While Ms. Knox may have been disputing the ability of Ms. Brightman to leave the premises with the child, her actions simply do not reflect the criminal conduct required before an arrest can be made under this code section. Even so, Ms. Knox was placed under arrest. Ms. Knox was arrested without a warrant and according to your own report you did not personally see Ms. Knox commit any criminal acts. As you know, you could have applied for a warrant to arrest Ms. Knox but chose not to do so. Interference with custody requires that a person unlawfully takes any child away from an individual who has lawful custody of such child. Nowhere in your report do you indicate that Ms. Knox had taken the child away from Ms. Brightman and as noted above, it is clear that Ms. Brightman had custody of her child when you arrived on the scene.

Ms. Knox is a 51 year-old woman with no prior criminal history. On the date and time of her arrest, Ms. Knox was peaceably attending to her business as guardian of the child. She was inside her residence when you asked her to step outside and placed her in handcuffs for no discernable reason. After her arrest, Ms. Knox was treated rudely. You fastened the handcuffs on her wrists too tightly causing her to suffer a good deal of pain. Despite the fact that she mentioned this to you several times, you failed to exercise even the basic standard of care to check the handcuffs for an appropriate fit or to see that they were double-locked. Oddly enough, while you were on the scene dealing with Ms. Knox, you witnessed a felony committed against her and her son when another subject on the scene, Ms. Daphne Moses, threatened that she was going to shoot Ms. Knox and her son Kevin. This terroristic threat was made in your presence as well as the presence of Ms. Knox's neighbor. Inexplicably, you did nothing.

Since the facts as recorded in your report do not support the charge for which she was arrested and based upon the fact that you did not observe Ms. Knox commit any criminal offense in your presence; and based upon the fact that you failed to seek a warrant for Ms. Knox's arrest from a magistrate; and based upon the fact that you made a warrantless arrest of Ms. Knox where there were no exigent circumstances to justify such an arrest, there was no probable cause to believe that an act of family violence had been committed, and there was certainly no evidence that Ms. Knox was endeavoring to escape, your decision to arrest of Ms. Knox was entirely without justification and unreasonable and cannot be said to be within the bounds of your official duties.

As a result of your decision to arrest Ms. Knox, she was forced to spend two days in the Fulton County Jail. As you might expect, for a woman like Ms. Knox who has never been in trouble with law enforcement, this experience has caused her to suffer a great deal of personal distress. Her ability to work has been disrupted and she has been unable to get temporary employment due to the fact that this arrest now appears on her criminal history. During the course of her arrest she suffered intense physical pain as a result of your failing to use due care when applying the handcuffs to her wrists. Further, the entire episode was observed by neighbors, causing Ms. Knox considerable personal embarrassment and public humiliation. Needless to say, your failure to arrest Ms. Moses after personally observing her make terroristic threats to Ms. Knox and her son caused additional mental anguish to Ms. Knox. She was treated rudely, unprofessionally and unfairly. Most importantly, your actions caused Ms. Knox to be separated from the child over which she had legal guardianship, causing her intense mental anguish and suffering.

Law enforcement is without a doubt a difficult job. However, it is a job that requires an investigating officer to do certain things. It is a job that carries great responsibility since you are dealing with a person's rights, life and liberty. In certain instances an officer is authorized to arrest a person for certain criminal offenses, yet that authority is not absolute. In this instance, Ms. Knox never challenged your authority during your investigation. Instead, she was unfailingly polite, as is her nature, and she cooperated with you in all respects. You will recall that she even went so far as to climb the stairs with you, while she was still handcuffed, in order to present the guardianship papers to you. Rather than resolving the issue with a call to the correct court, you simply seized the papers without justification and transported Ms. Knox to jail. Importantly, a hearing was held on September 18, 2008 in the Magistrate Court of Fulton County where the judge found that *no probable cause existed* for the charge of Interference with Custody, that Ms. Knox had valid Guardianship papers and therefore had legal custody of the child at the time of her arrest. The charge was then dismissed. Ms. Knox should never have been arrested and subjected to two days in the Fulton County Jail based on the facts of this incident.

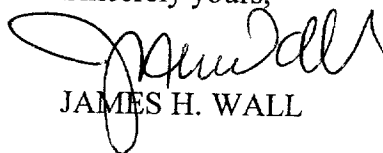
While it is true that police officers do enjoy official immunity in certain instances that immunity is not absolute. Police officers can be held liable for official acts when those acts are done oppressively or maliciously. Georgia courts have held that if a reasonable person would have investigated to determine if probable cause existed prior to urging an arrest and prosecution, the failure to make such an investigation may imply malice.

Accordingly, you are afforded ten (10) days from today's date within which you are to pay over to my client the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) in full and final settlement of this matter. Considering the damages sustained by my client, I feel that this demand is objectively fair and forthrightly justified. Should you fail or refuse to act in this prescribed period, I will have no alternative but to seek legal action against you in an appropriate court.

Should you have any question or comment concerning this matter, please feel free to call on me at any time. I will look forward to hearing from you within the next ten (10) days.

With warmest regards, I am,

Sincerely yours,



JAMES H. WALL

JHW

cc: Ms. Vickie Knox
cc: Chief of Police

		03-01-10
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT
1. 10-O-0275 2. 10-O-0276 3. 10-O-0277 4. 10-O-0278 5. 10-O-0279 6. 10-O-0289 7. 10-O-0290 8. 10-O-0291 9. 10-O-0292 10. 10-O-0293 11. 10-O-0294 12. 10-O-0296 13. 10-O-0241 14. 10-O-0307 15. 10-R-0334 16. 10-R-0335 17. 10-R-0390 19. 10-R-0395 20. 10-R-0407 21. 10-R-0411 22. 10-R-0394 23. 10-R-0396 24. 10-R-0338 25. 10-R-0339 26. 10-R-0340 27. 10-R-0341 28. 10-R-0342 29. 10-R-0343 30. 10-R-0344 31. 10-R-0345 32. 10-R-0346 33. 10-R-0347 34. 10-R-0348 35. 10-R-0349	36. 10-R-0350 37. 10-R-0351 38. 10-R-0352 39. 10-R-0353 40. 10-R-0354 41. 10-R-0355	42. 10-R-0356 43. 10-R-0357 44. 10-R-0358 45. 10-R-0359 46. 10-R-0360 47. 10-R-0361 48. 10-R-0362 49. 10-R-0363 50. 10-R-0364 51. 10-R-0365 52. 10-R-0366 53. 10-R-0367 54. 10-R-0368 55. 10-R-0369 56. 10-R-0370 57. 10-R-0371 58. 10-R-0372 59. 10-R-0373 60. 10-R-0374 61. 10-R-0375 62. 10-R-0376 63. 10-R-0377 64. 10-R-0378 65. 10-R-0379 66. 10-R-0380 67. 10-R-0381 68. 10-R-0382 69. 10-R-0383 70. 10-R-0384 71. 10-R-0385